

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**-----X  
866 EAST 164<sup>TH</sup> STREET, LLC,

Plaintiff,

-against-

UNION MUTUAL FIRE INSURANCE  
COMPANY,

Defendant.

-----X

The parties having cross-moved for summary judgment; Union Mutual asserts that he policy was properly voided based on material misrepresentation in plaintiff's application for insurance coverage regarding whether the property was vacant and undergoing major renovations; Union Mutual also raises the affirmative defense of accord and satisfaction specifically, that Union Mutual issued a policy premium refund check and that, by depositing the check, plaintiff acknowledged that the policy was void ab initio; in its cross-motion , plaintiff claims that Union Mutual breached its contract by voiding the policy and that Union Mutual's alleged misconduct violates N.Y. General Business Law § 349; Plaintiff also seeks consequential damages for Union Mutual's breach of its implied duty of good faith and fair dealing, and the matter having come before the Honorable Sarah Netburn, United States Magistrate Judge, and the Court, on October 3, 2017, having rendered its Opinion and Order granting Union Mutual's motion for summary judgment, denying plaintiff's cross-motion, and directing the Clerk of Court to close this case, it is,

**ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated October 3, 2017, Union Mutual's motion for summary judgment is granted and plaintiff's cross-motion is denied; accordingly, the case is closed.

**Dated:** New York, New York  
October 5, 2017

**RUBY J. KRAJICK**

Clerk of Court

BY:

Deputy Clerk

'THIS DOCUMENT WAS ENTERED  
THE DOCKET ON 10/5/2017